

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ALONZO EUGENE TURNER-BEY #205-291*
Plaintiff,

v.

GARY D. MAYNARD, et al.,
Defendants.

*

CIVIL ACTION NO. JFM-10-2816

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MEMORANDUM

Alonzo Eugene Turner-Bey, a self-represented prisoner confined within the Maryland Division of Correction (“DOC”), filed a civil rights action pursuant to 42 U.S.C. § 1983 complaining that prison policy forces him to choose between violating Islamic dietary law or remaining on a strict vegetarian diet. ECF No. 1. He further claims the vegetarian diet offered often contains items unacceptable to practicing Muslims like himself. In addition to these claims alleging violations of the Establishment Clause of the First Amendment and the Religious Land Use and Institutionalized Persons Act (RLUIPA), plaintiff alleges his right to equal protection has been violated, as evidenced by written DOC policies which accommodate the religious dietary needs of other groups of prisoners while excluding Muslims from the guidelines.

Plaintiff seeks compensatory and punitive damages and injunctive relief requiring the DOC to provide incarcerated Muslims with a diet fully acceptable under Islamic law that will also include ritually slaughtered meat. The case is before the court on a motion to dismiss or for summary judgment filed by defendants¹ Kathleen Green (Warden at Eastern Correctional Institution or “ECI”), Debbie Heffron (ECI’s Correctional Dietary Manager), Fazal Khattak (ECI’s Islamic chaplain), Gary Maynard (Secretary of the Maryland Department of Public Safety

¹ Defendant Nancy Williams, Director of Religious Services, was not served with summons and a copy of the complaint. For reasons apparent herein, the oversight requires correction at this time. Counsel shall be required to inform the court whether he is willing to accept service of process on Williams. If representation is not forthcoming, counsel shall provide under seal an address where Williams can be served.

and Correctional Services or “DPSCS”), Connie Shaff (DOC Correctional Dietary Regional Manager for the Eastern Region) and J. Michael Stouffer (Commissioner of the DOC) (ECF No. 22) and plaintiff’s opposition thereto. ECF No. 26. For reasons set forth below the motion, treated as a motion for summary judgment, shall be denied subject to further briefing as set forth herein, and defendants shall be required to provide supplemental materials in support of their arguments.

Standard of Review

Summary Judgment is governed by Fed. R. Civ. P. 56(a) which provides that:

The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.

The Supreme Court has clarified that this does not mean that any factual dispute will defeat the motion:

By its very terms, this standard provides that the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact.

Anderson v. Liberty Lobby, Inc., 477 U. S. 242, 247-48 (1986) (emphasis in original).

“The party opposing a properly supported motion for summary judgment ‘may not rest upon the mere allegations or denials of [his] pleadings,’ but rather must ‘set forth specific facts showing that there is a genuine issue for trial.’” *Bouchat v. Baltimore Ravens Football Club, Inc.*, 346 F.3d 514, 525 (4th Cir. 2003) (alteration in original) (quoting Fed. R. Civ. P. 56(e)). The court should “view the evidence in the light most favorable to. . . the nonmovant, and draw all inferences in her favor without weighing the evidence or assessing the witness’ credibility.” *Dennis v. Columbia Colleton Med. Ctr., Inc.*, 290 F.3d 639, 644-45 (4th Cir. 2002). The court must, however, also abide by the “affirmative obligation of the trial judge to prevent factually

unsupported claims and defenses from proceeding to trial.” *Bouchat*, 346 F.3d at 526 (internal quotation marks omitted) (quoting *Drewitt v. Pratt*, 999 F.2d 774, 778-79 (4th Cir. 1993), and citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986)).

Background

Plaintiff, a practicing Muslim, alleges his civil rights are violated pursuant to DOC policies governing the purchase and preparation of food. To understand his claims requires a basic understanding of Islamic dietary practices.

“Halal,” the Arabic word for “lawful,” is a term designating any object or action which is permissible to use or engage in, in accordance with Islamic law. Under Islamic law (“Sharia”) there are many things that are clearly “halal” (permissible) or “haraam” (forbidden), as well things that are “mashbooh” (questionable), about which further information is needed. “Halal” and its opposite, “haraam,” are applied to many facets of life and often used in reference to meat products, food preparation and storage, and pharmaceuticals. *See* Islamic Food and Nutrition Council of America at 1.² Forbidden dietary items include: pork and all its products; animals improperly slaughtered; alcoholic drinks, including all forms of intoxicants; carnivorous animals; birds of prey; and any food contaminated with any of these products. *Id.*; *see also* ECF No. 22, Exhibit A, Statement of Hajj Habib Ghanim, Sr., Islamic Society of the Washington Area (“ISWA”), USA Halal Chamber of Commerce, Inc.³ Under the standards of the ISWA, permissible meats and poultry are harvested with Allah’s name invoked just prior to slaughter.⁴

² The home page of the IFNCA is found at <http://www.ifanca.org/halal/>. A copy of portions of the website is attached to this memorandum.

³ Mr. Ghanim is affiliated with the Association of American Halal Certifiers (“AAHC”).

⁴ Plaintiff provides a copy of “A Comprehensive List of Halal Food Products in U.S. & Canadian Supermarkets” as Exhibit D to his opposition memorandum (ECF No. 26). It is unclear which Islamic association prepared this list. The document indicates that certain Kosher foods meet Islamic dietary requirements and are considered halal. *Id.* at xv. Kosher meats, however, are not halal, because many rabbis say prayers only on the first and tenth animal, rather

Id.

Discussion

The primary allegation raised in the complaint concerns plaintiff's frustration with a lack of meat and poultry slaughtered and prepared in accordance with Islam. Because the DOC's meat and poultry dishes are not "halal," plaintiff must choose between violating an important tenet of his faith or opt for either a regular vegetarian diet or a lacto-ovo (milk and egg) vegetarian diet.⁵ While defendants rely on an argument that providing such meats is cost-prohibitive,⁶ they provide no specific case law discussion in support of their position.

A secondary allegation – again not fully addressed by the DOC – becomes evident upon review of plaintiff's opposition memorandum, in which he contends that the vegetarian options available nonetheless contain items produced with products that are not "halal" and that food provided under the vegetarian diet may have been contaminated with "haraam" items during the storage and cooking process, making the food unacceptable under Islamic law.⁷ While the

than on every animal slaughtered. *Id.* at xvi.

⁵ While this choice might pose little hardship for those serving a short period of incarceration, plaintiff is serving life plus ten years for felony murder, and has been incarcerated since 1988. *See* <http://casesearch.courts.state.md.us/inquiry/inquiryDetail.jis?caseId=CA972726J&loc=65&detailLoc=PG>

⁶ Plaintiff provides an April 20, 2004 affidavit by defendant Nancy Williams demonstrating the DOC for some time has been aware of the number of adherents of various faiths and the fiscal impact that would follow if all practitioners were permitted to observe religion dietary practices unique to each faith. Plaintiff does not provide identifying case information related to the affidavit. The affidavit references *Calhoun-el v. Bishop, et al.*, Civil Action No. K-89-547 (D. Md.) and *Robinson-bey v. Robinson, et al.*, Civil Action No. K-89-548 (D. Md.). The Maryland Attorney General was involved in this litigation; discussion as to its outcome would be welcomed here.

⁷ As explained on IFANA's internet site,

“[t]here are various kinds of ingredients found on the labels of products we buy. Some of them are simple or single components, like salt, sugar and water. Others are complex or compound, such as colorings, cheese powder, flavorings, seasonings, shortening, spices etc. On some labels we see the ingredients are listed by their functions, such as antioxidants; emulsifiers; preservatives; supplements and thickeners to name a few. Sometimes the questionable ingredients such as alcohol; enzymes; fats and gelatin are not clearly listed but are hidden in flavorings; cheese, gums and ice cream. As Muslims we should know if the ingredients we see on the label are halal, since they could be obtained from animal, plant, microbial, or synthetic sources.... For all Muslims, this group of [questionable, or “mashbooh”] consumables consists of

affidavits and statements provided by its experts are instructive, defendants provide no in-depth discussion of why the current food preparation and storage practices are “halal,” including whether any “mashbooh” practices that may exist may be overlooked or ignored where practicing Muslims are incarcerated or otherwise under duress.⁸ This discussion, including case law examining such practices, is needed for resolution of this case.

Finally, plaintiff alleges that Muslims are excluded from the DOC’s Religious Diet Program, set out in emD.DOC.160.0002 (attached as Exhibit A to ECF No. 26). Examination of the document supports this claim. Plaintiff additionally provides a September 17, 2008, Memorandum from defendant Shaff setting forth a menu for the holy day of Rosh Hashanah depicting Kosher meats and other foods to be served to Jewish inmates ending their fast. *Id.*, Affidavit and Exhibits Part II of II, Exhibit I. Defendants must explain why permitting one religious community to celebrate its holiest day with a feast including ritually prepared meats,⁹ while denying another community the same, is constitutionally permissible.

Defendants have failed to meet their burden in support of their motion for summary judgment. The motion shall therefore be denied without prejudice and additional briefing will be

ingredients that are doubtful or questionable All....items are derived either from animal, plant, microbial or synthetic sources. If [a food additive] comes from an animal source, then we need to know if the animal was halal and if so, was it slaughtered properly or not. If yes or if the source is plant or certified-microbial, then....we can eat it.” See “ifana “What is in our Food?” <http://www.ifana.org/what/> a copy of which is attached to this memorandum.


⁸ Plaintiff’s Exhibit E, “Introduction and Comprehensive List of Halal Food Products in US Supermarkets,” states that “[a]ccording to a Hadith, the Prophet Mohammed...said Allah will not accept the prayers of a Muslim for forty days if a small bite of Haram food was consumed.” *Id.* at xiii. Whether this sanction applies to all Muslims under all circumstances must be examined.

⁹ Plaintiff further supports his position with Exhibit O, an April 8, 2011 information bulletin by DPSCS which lists several “faith groups” that will be given one ceremonial meal each year. The bulletin, signed by defendant Stouffer, discusses inclusion in ceremonial religious meals for the Hebrew Israelites, Assemblies of Yahway, and House of Yahweh. Muslims are not included in the bulletin.

required as set forth in a separate order.

October 13, 2011
(Date)

/s/
J. Frederick Motz
United States District Judge

	Islamic Food and Nutrition Council of America	Quick Search <input type="text"/> <input type="button" value="Go"/>
<div>Home</div> <div>General</div> <ul style="list-style-type: none"> ► What is Halal? What Is In Our Food? About Us Contact Us Legal Information Announcements Press Kit Halal Foodservice Kit <div>Consumer</div> <ul style="list-style-type: none"> Halal Digest Halal Consumer Shopper's Guide FAQ Halal Certified Products <div>Industrial</div> <ul style="list-style-type: none"> Certification Benefits The Procedure Apply Online Halal Glossary FAQ <div>Islam</div> <ul style="list-style-type: none"> Islam (Some Basics) Eid-ul-Adha Eid-ul-Fitr Ramadan Hajj Hijra Calendar 	<div>What Is Halal?</div> <p>Halal is an Arabic word meaning lawful or permitted. The opposite of halal is haram, which means unlawful or prohibited. Halal and haram are universal terms that apply to all facets of life. However, we will use these terms only in relation to food products, meat products, cosmetics, personal care products, pharmaceuticals, food ingredients, and food contact materials.</p> <p>While many things are clearly halal or haram, there are some things which are not clear. Further information is needed to categorize them as halal or haram. Such items are often referred to as mashbooh, which means doubtful or questionable.</p> <p>All foods are considered halal except the following (which are haram):</p> <ul style="list-style-type: none"> • Swine/Pork and its by-products • Animals improperly slaughtered or dead before slaughtering • Alcoholic drinks and intoxicants • Carnivorous animals, birds of prey and certain other animals • Foods contaminated with any of the above products <p>Foods containing ingredients such as gelatin, enzymes, emulsifiers, and flavors are questionable (mashbooh), because the origin of these ingredients is not known.</p>	
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What Is In Our Food

What is in Our Food...? Is It Permissible?

By Syed Farhatullah Quadri, Ph.D., Mariam Majeed, and Mujahed Khan; Food Scientists, IFANCA

As Muslims, we are constantly striving for perfection in all facets of life. As a result, we are constantly trying to gain knowledge so that we may further progress. The reality is that while we aim to perfect our relationships, our roles at work, and our habits as students, we sometimes fail to realize that there is a catalyst that will help facilitate this quest for perfection, and that is food. While our bodies are nourished by the food we consume, our souls too are nourished by the permissibility and purity of that same food. Those who strive to consume only that which is halal (lawful) and tayyib (pure) are blessed with their bodies striving towards that which is halal and tayyib. As a result, as Muslims, we need to make a conscious effort to answer the question, "is what we buy and consume everyday really halal?"

IFANCA, an internationally recognized halal certifying organization, is staffed by a qualified scholars, technical staff and administrators. It is registered as a not-for-profit organization in Illinois and is recognized by the United States Department of Agriculture (USDA) and several halal regulatory agencies in countries including Indonesia, Malaysia, Saudi Arabia, Singapore, and the UAE. During the last three decades, IFANCA has certified thousands of products and ingredients, including processed food; meat products; pharmaceuticals; nutraceuticals and cosmetics for more than 2,200 companies world-wide.

The mission of the Islamic Food and Nutrition Council of America (IFANCA) is to promote the concept of halal and educate Muslims regarding mashbooh (doubtful) ingredients, including those that are present in food; nutritional supplements; pharmaceuticals and cosmetics.

IFANCA serves the Muslim community worldwide by conducting conferences and seminars, responding to consumer and industrial inquiries about ingredients and products and assisting correctional facilities to establish partial halal kitchens in the prisons to satisfy the dietary needs of Muslim inmates. IFANCA has recently resumed educational workshops and presentations in various Islamic institutions in the Chicagoland area and will soon offer these services to neighboring cities and states. The focus of these presentations is to create awareness of the permissibility of foods. A description of the important points will be discussed in the paper below. Readers are also encouraged to visit www.ifanca.org and www.halal.com frequently for the current information about certified products and halal news and resources. Furthermore, if you are interested in organizing an informational session in your local community please contact IFANCA.

1. Responsibility Of Muslims:

Our main goal is to please ALLAH (Subhanahu wa ta'ala) alone by obeying HIS commands on all matters including issues of halal and haram, as well as following the sunnah of our beloved Prophet Muhammad (salla ALLAHu alaihi wa sallam). Several verses of the Noble Quran have been revealed regarding food. A quick look at a few verses allows us to see the importance HE has put on the consumption of food:

"O you who believe! Eat of the good things from what WE have provided you, and render thanks to ALLAH if it is HE whom you worship." (2:172)

"O mankind! Eat of that which is lawful and wholesome in the Earth, and follow not the foot-steps of the devil. Lo! he is an open enemy for you." (2:168)

"O you who believe! Forbid not the good things which ALLAH has made 'lawful' for you and transgress not. Lo! ALLAH loves not transgressors. Eat of that which ALLAH has bestowed on you as food 'lawful' and good, and keep your duty to ALLAH in whom you are believers." (5:87-88)

There are many more verses in the Quran and the Sunnah of the Prophet (salla ALLAHu alaihi wa sallam) that speak about other aspects of halal and haram. We should look into such commandments and understand them for our own betterment.

2. **Muslim Population:**

Currently there are 1.6 billion Muslims in the world, and the number is increasing, particularly in the major metropolitan cities across the U.S. In other published reports, it is quoted that the global halal food trade market is about \$150 billion with the Muslim buying-power at about \$600 billion. In the US alone, the buying-power of Muslims is about \$20 billion strong. These figures are very promising. More information can be found in the May 25, 2009 issue of TIME magazine. Because of the efforts of some organizations, various states have passed the Halal Food Act in their legislation. The bill was signed into law in New Jersey in 2000, Illinois and Minnesota in 2001, California and Michigan in 2002, Texas in 2003, and New York in 2005. Insha'ALLAH many more will follow. As the number of Muslims and halal consumers continues to grow, we are seeing more American companies extending their halal certification from export products to domestic ones. We are also seeing increased marketing of halal-certified imported products. This is also likely due to the increased feedback and strong support from halal consumers to companies demanding halal certified products.

3. **Ingredients:**

There are various kinds of ingredients found on the labels of products we buy. Some of them are simple or single components, like salt, sugar and water. Others are complex or compound, such as colorings, cheese powder, flavorings, seasonings, shortening, spices etc. On some labels we see the ingredients are listed by their functions, such as antioxidants; emulsifiers; preservatives; supplements and thickeners to name a few. Sometimes the questionable ingredients such as alcohol; enzymes; fats and gelatin are not clearly listed but are hidden in flavorings; cheese, gums and ice cream. As Muslims we should know if the ingredients we see on the label are halal, since they could be obtained from animal, plant, microbial, or synthetic sources. A list of such items is given below for a quick reference and can be copied and carried along for shopping convenience.

4. **Classification Of Foods:**

Halal - We all know very well the terms halal and haram and have a clear idea about the food items we consume. For Muslims the Halal or permissible items are:

- All vegetable materials except intoxicating ones
- The meat from humanely-handled halal animals and birds slaughtered by a sane Muslim after pronouncing Bismillah and ALLAHu Akbar, followed by blood draining
- Fish and most seafood
- Milk and eggs from halal animals

Haram - Alhamdulillah, we have a very clear understanding of the haram foods, and we all refrain from consuming items such as:

- Alcoholic drinks and intoxicating drugs
- Pork and its by-products

- Meat of dead animal
- Blood
- Meat of animals not slaughtered according to Islamic requirements
- Products that contain any of the above items

Mashbooh - For all Muslims, this group of consumables consists of ingredients that are doubtful or questionable and it causes us to stop and ponder whether we can use them or not. IFANCA provides you with the information that will take the "doubt" out of these doubtful items. When a consumer sees an ingredient listed in the tables below titled "Mashbooh (Questionable) Food Items", "Hidden Ingredients", "Ingredients by Functions", and "Halal Shoppers Guide", e.g. Animal fat or proteins; Antioxidants; Dairy products; Emulsifiers; Enzymes; Flavorings; Gelatin; Glycerin and Vitamins, he or she should immediately think of its probable source and verifying it by calling the manufacturer. All such items are derived either from animal, plant, microbial or synthetic sources. If it comes from an animal source, then we need to know if the animal was halal and if so, was it slaughtered properly or not. If yes or if the source is plant or certified-microbial, then alhamdulillah, we can eat it.

5. Solutions & Suggestions:

It is every Muslim consumer's responsibility to be conscientious of what he/she does, whether it be the consumption of food, nutritional supplements, pharmaceuticals or cosmetics items, and to please ALLAH (Subhanahu wa ta'ala) by following HIS commandments. We should:

- a. Look for a registered halal logo such as  or others on the packaging of the product.
- b. Always read the ingredients on labels carefully.
- c. Avoid products that contain Mashbooh ingredients.
- d. Look for pertinent information by visiting reliable web sites (such as www.ifanca.org, www.halal.com or by calling the manufacturer directly.
- e. Share correct information with relatives and friends and refrain from rumors.
- f. Ask the manufacturers if their products can:
 - be halal certified for US consumers and
 - have halal logos on their products.

As A Halal Consumer, I Should Learn The Classification Of Foods

Halal

- All vegetable materials except intoxicating ones
- Meat from halal animals and birds slaughtered according to Islamic requirements
- Fish and most seafood
- Milk and eggs from halal animals

Haram

- Alcoholic drinks and intoxicating drugs
- Meat of halal animals/birds not slaughtered properly
- Meat of dead animals
- Blood
- Pork and its by-products

Mashbooh Food Items

- Animal fat or protein (halal animal, halal slaughtered?)
- Anti-oxidants (animal or plant source?)
- Dairy Products (enzymes/cheese/whey?)
- Emulsifiers (animal or plant source?)
- Enzymes (animal/microbial/plants?)

- Flavoring agents (non halal ingredients?)
- L-Cysteine and other amino acids (source?)
- Gelatin (animals, halal certified?)
- Glycerin (animals or plant?)
- Vitamins (carriers?)

As A Halal Consumer, I Should Be Familiar With

Different Types of Ingredients			
Simple or Single		Complex or Compound	
Salt	Sugar	Batters	Breadings
Flour	Water	Colorings	Flavorings
Honey	Vinegar	Cheese Powder	Enriched Flour
Ascorbic Acid	Aspartame	Enrichment Mix	Seasonings
Benzoate	Gelatin	Shortenings	Spices
L-Cysteine	Onion Powder	Vitamin Mix	
Phosphate	Propionic Acid		

As A Halal Consumer, I Should Know Hidden Ingredients In Common Foods

Ingredient	Food
Liquor	Chocolate
Gelatin	Ice Cream and Pharmaceuticals
Lard	Maple Syrup
Pan Grease/Lard	Bread/Baked Goods
Polysorbates	Dairy Products
LPork Lipase	Cheese
Stearates	Chewing Gum

As A Halal Consumer, I Should Be Aware Of Ingredients By Function

Function	Ingredient
Antioxidants	BHA, BHT, Ascorbic Acid
Acidulates	Citric Acid, Carbonic Acid
Colorings	Blue, Carmine, Red, Yellow 5,6 etc.
Emulsifiers	Lecithin, Mono Di-Glycerides
Flavorings	Artificial/Natural Flavors, Spices
Flavor Enhancers	Monosodium Glutamate (MSG)
Fortifiers	Thiamine, Vitamin A & D
Preservatives	Benzoic Acid, Propionic Acid
Stabilizers	Alginate, Gelatin, Phosphates
Supplements	Amino Acids, Minerals, Vitamins
Sweeteners	Aspartame, Saccharin, Sucralose

Halal Shopper's Quick Reference Guide II Common Foods That May Be A Concern

Products	Examples of Mashbooh (Doubtful) Ingredients

Bread	Lecithin, Mono/Diglycerides
Bagels	Cysteine hydrochloride, Enzymes, Folic acid, Niacin
Candy	Glycerin, Gelatin, Mono Glycerides, Whey, Natural & Artificial flavors, Stearic acid, Magnesium Stearate
Cereals	Artificial/Natural flavors, Vitamin A, B2, C, D
Chips	Cheese
Cookies	Folic acid, Thiamine
Granola Bars	Flavorings
Coffee Creamer	Artificial/Natural flavors, Mono/Diglycerides
Cakes	Artificial/Natural flavors, Mono/Diglycerides
Donuts/Pastries	Mono/Diglycerides, Flavors, Lard
Ice Cream	Whey, Artificial flavor, Mono/Diglycerides
Jell-O/Puddings	Gelatin, Artificial/Natural flavors
Cheese	Enzymes
Shortenings	Animal fat, Mono/Diglycerides
Peanut Butter	Mono/Diglycerides
Colas	Natural flavors
Ketchups	Natural flavors
Yogurts	Flavors, Gelatin, Whey
Gums	Glycerin, Stearic acid
Mouth Wash	Alcohol, Flavors, Glycerin
Nutritional Supplements	Gelatin, Magnesium Stearate
Soaps	Sodium Tallowate, Glycerin
Toothpaste	Sodium Lauryl Sulfate

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